Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BLUEKILLERFOREVER *v.* NATIONAL SECURITY COUNCIL

PETITION FOR REVIEW TO THE UNITED STATES GOVERNMENT

No. 11–23. Argued July 26, 2021—Decided July 23, 2022

In early June of 2021, Petitioner BlueKillerForever was hired as a campaign manager for Alex J. Cabot's presidential campaign. During the campaigning period, Petitioner publicly professed disdain for the policies and practices of Cabot's main opponent, then-Speaker of the House Leo Vinick. Following Leo Vinick's purported victory in the recent July presidential election, Petitioner publicly continued to question the practices employed by the Vinick campaign in securing victory. Leo Vinick presented a strong disdain for the view held about his victory. Following Leo Vinick's inauguration as President, he unilaterally issued a national security threat designation against Petitioner and others he supposedly had a distaste for—removing them from positions they held and further barring them from employment in his administration. He was informed by those in his administrations that his decision was not in accorance with *Tools*, *et al*. v. *United States*, 9 U. S. 113. President Vinick immediately retracted and introduced a motion to be voted on in the National Security Council to officially designate Petitioner BlueKillerForever as a threat to national security. Without a hearing to consider arguments against the motion or a moment to consider the evidence, the National Security Council, relying on the powers afforded to them in the National Security Act of 2020 to issue such designations by simple majority vote, voted to name Petitioner as a national security threat. The President subsequently ordered Petitioner's removal from all his federal positions. Following a petition to our Court, the Court has decided to grant review in this matter. However, our scope on this question is limited to our previous rulings relating to the President's power to remove an individual who is employed in the Executive branch as well as any relevant due process matters.

Held: Petitioner was unlawfully and unconstitutionally removed from his place on the National Security Council per the statutes detailed in the National Security Act of 2020. Pp. 3–7.

(a) Petitioner was not granted his due process rights, per *Tools* v. *United States*, 9 U. S. 113. Therefore, this left him in a place to receive relief by coming to our Court through seeking Anytime Review. There was no sense of due process granted procedurally, substantively, or formatively. Pp. 7–13.

(b) To opine in the Respondent's favor would cause the Court to engage in unconstitutional behavior, which we have voted not to do, under the separation of powers doctrine. Pp. 13-17.

BUTLER, J., delivered the opinion of the Court, in which SOUTER, C. J., STORY, BRENNAN, and GOLDBERG joined. VINSON, J., took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 11–23

BLUEKILLERFOREVER, PETITIONERS *v.* NATIONAL SECURITY COUNCIL

ON PETITION FOR ANYTIME REVIEW

[July 1, 2022]

JUSTICE BUTLER delivered the opinion of the Court.

In this case, Petitioner was not only unlawfully removed from the National Security Council as well as from positions within the Executive Branch, but he was also unconstitutionally ejected from such as well. We were rather clear in *Tools* v. *United States*, 9 U. S. 113 (2020) when we held that "'[a] fair procedure in this case, among other things would have to be "provide[d] opportunities for petitioners to explain themselves, to submit documents that might be helpful to their case, . . . [to] appeal" or some alternative which would have "afforded petitioners their due process rights."' Supposedly, the Council was aware of our holding and still messed it up. See Petition for Anytime Review, p. 4. And I do find this slip-up to be abnormal to say the least considering the Attorney General and the Deputy Attorney General, respectively, are members of the National Security Council. See sec. 102(a)(viii), title 1, National Security Act of 2020; see also sec. 102(c)(vi) (same). One would presume that having the Executive's top-two lawyers at their disposal would smooth matters; however, that backfired. This leaves with the Judiciary to clean matters up through our channel of Anytime Review. Typically, we, the Court, are rather picky with the cases we hear through this avenue. Though, considering that this case was dependent on an in-

dividual's interpretation of arguably tricky statutory language, due process matters, employment concerns, and partially expanding our parameters for the kinds of cases we hear from Anytime Review petitions, only a fool would not grant review in a matter as serious as this one. Especially when we have said, "[t]he Court will not pass upon a constitutional question [even if] properly presented in the record, if there is also a presen[ce] some other ground upon which the case may be disposed of." *Ashvander* v. *TVA*, 297 U. S. 288, 347 (1936). Questions of "statutory construction or general law" are among those other grounds. *Ibid*. See also *Siler* v. *Louisville & Nashville R. Co.*, 213 U. S. 175, 191 (1911).

This leads me to two places, too. The Council could (1) handle the matter for themselves—had they done it properly and correctly within our established parameters of criminal due process—or (2) they could have referred the matter to the United States Attorney for the District of Columbia to pursue criminal charges in a court of law. Both could be done, but that would be stickier than a cinnamon bun fresh out of the oven.

I

This case is based on the text of the National Security Act of 2020 or Pub. L. 80-6. The Court does partially concur with the Petitioner in that "[w]here the congressional intent is clear, it governs." See Petition for Anytime Review (citing *Kaiser Aluminum* v. *Bonjorno*, 494 U. S. 827 (1990)). "Where the language of those laws is clear, we are not free to replace it with an unenacted legislative intent," *INS* v. *Cardoza-Fonseca*, 480 U. S. 421 (1987). Handcuffed to the text before us in the National Security Act of 2020—because the language is clear and the intent is also clear—, we can, without a doubt, determine that the purpose of this legislation is to structure and regulate—not to create a database or founding document that creates criminal statutes for

those who are "involved with illegal activities that constitute threats to the national security of the United States." See sec. 105(a), title 1, National Security Act of 2020 (herein "National Security Act" or "the Act").

Reading over the text of the National Security Act, its whole intent is clear to any reader who has achieved a C-minus in a civics and government course in their high school education. Title 1 details the National Security Council—who is on it, what the purpose of this council is, what responsibilities the council has, and what determines a national security threat and transnational threat. Title 2 builds the Intelligence Community—Office of Director of National Intelligence, Central Intelligence Agency, National Security Agency, Defense Intelligence Agency, National Reconnaissance Office, National Geospatial-Intelligence Agency, Military Intelligence, the Command of such, the National Security Advisor, Acting Directors, its work with Congress, and Intelligence Community Blacklists (which are suspicious themselves). Title 3 does some housekeeping things to help the implementation of the legislation. That is the intent of the piece.

Section 103(ii), of title 1, of the National Security Act permits the National Security Council "to oversee, regulate, and decide national security threats." For them to "decide national security threats," they are determining the person or persons in question "partake in, provide material support for, solicit, or are otherwise maliciously involved with illegal activities that constitute threats to the national security of the United States." See Section 105(a), title 1, of the National Security Act. Of the same section, the only threshold to make this determination successfully is if "a majority of the Council" declares the potential threat as a national security threat. Therefore, they would no longer be deemed or categorized as a potential threat. Rather, they would be moved to a more serious category of being a national security threat.

With the prongs created in (a) of Section 105, I do not see how the Petitioner meets any of these requirements. While he could—potentially—be a threat, I do not see how he could be a threat of national security. While the then-President may have found him disloyal, we have said that a "'security threat is not synonymous with 'disloyal.'" See *Beilan* v. *Board of Education*, 357 U. S. 399 (1958). To my knowledge, no law of ours in NUSA has repealed or amended section 1701(a), Title 50, United States Code. In that, it does state rather clearly that the President's authority under that specific code "may be exercised to deal with any unusual or extraordinary threat, which has its source in whole or substantial part outside of the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." I read this and find that the criteria is two-fold—in the most general way of putting it. First, is the threat unusual or extraordinary? Second, does the threat have any threat to the protection or execution of (1) matters outside of the United States; (2) to national security; (3) foreign policy; and/or (4) the economy of the United States? See *Dames Moore* v. *Regan*, 453 U. S. 654 (1981). The Petitioner satisfies none of the above on either fold. To how he was declared a national security threat, well, it was certainly on the basis of nothing pertain to a statutory violation. My next best guess would be that the Council received damning evidence, spoke to the Petitioner about this evidence that would be the basis of him being a national security threat, and then the Council voted—as they are legally obligated to do so, *ibid*—to declare him a national security threat. Unfortunately, they did not provide him with such interrogation or interview. Instead, they voted, and, upon the conclusion of the vote, Petitioner was a national security threat.

II

The Due Process claims in this case are a head-scratcher. One route causes us to challenge some of the Court's logic in *Adamson* v. *California*, 332 U. S. 46 (1947). In this case, we explored the connection between the rights guaranteed under the Fifth Amendment did not, however, extend to the state courts—a tribunal body that we do not have in our community personally—based on the due process clause of the Fourteenth Amendment. See *Adamson* v. *California*, 332 U. S. 46, 51 (1947). Leaving Justice Hugo Black to dissent and argue that the Bill of Rights ought to "extend to all the people of the nation the protection of [the specific enumerated rights of] the Bill of Rights." *Adamson*, 332 U. S. at 90. We initially said in *Barron* v. *Baltimore*, 32 U. S. (7 Pet.) 243 (1833) that the Bill of Rights did not apply to states. In our community, the question would be—does the Bill of Rights apply to our municipalities? That is not the question before us, but that would be the question one would raise if they wanted to venture down that road.

In *Nuinik* v. *United States*, 5 U. S. 80 (2018), our Court said that the Fifth and Fourteenth Amendments to the Constitution articulate that all citizens of the United States are subject to due process under the law. "[O]ur cases establish, at a minimum, that criminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury [sic] evidence that might influence the determination of guilt." *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 56 (1987). Under this precedent, the Court must decide whether the Council's to not hear the deposition of anything our Petitioner now brings before us violated his due process rights. "There is a significant difference between the Compulsory Process Clause weapon and the other rights protected by the Sixth Amendment—its availability is dependent entirely on the defendant's initiative." *Taylor* v. *Illinois*, 484 U. S. 400, 410 (1988). The reason I refer to the Sixth Amendment is because being a national security threat is

criminal. See section 793, title 18, United States Code. The defendant's right to compulsory process is itself designed to vindicate the principle that the "ends of criminal justice would be defeated" if judgments were to be founded on a partial or speculative presentation of the facts." *United States* v. *Nixon*, 418 U. S. 683, 709 (1974). Subsequently, a judge whose decision is based on a partial representation of the facts is neglecting his duty to carry out the rule of law. Furthermore, for a defendant's rights to depose any materials—witnesses, evidence, testimony, or arguments—to aid his case to be infringed is a travesty and detriment to our judicial system.

Under the Compulsory Process Clause (which guarantees the right to call defense witness) and the Assistance of Counsel Clause (which guarantees the effective assistance of counsel). See, *e.g.*, *Pennsylvania* v. *Ritchie*, 480 U. S. 39, 56 (1987) ("Our cases establish, at a minimum, that criminal defendants have the right … to put before a jury evidence that might influence the determination of guilt"); *Strickland* v. *Washington*, 466 U. S. 668 (1984) (establishing the ineffective-assistance-ofcounsel standard).

To accuse Petitioner of engaging in criminal activity to the extent that it is somehow deemed a national security threat, as Justice Frankfurter put it, "[t]o suppose that 'due process of law' meant one thing in the Fifth Amendment and another in the Fourteenth Amendment is too frivolous to require elaborate rejection." See *Malinski* v. *New York*, 324 U. S. 401, 415 (1945) (Frankfurter, J., concurring). Therefore, it is plausible for the Court to treat the Fifth and Fourteenth Amendments together and equally in regard to due process. Granted, the Court did say in 1855 that "[t]he words, 'due process of law', were undoubtedly intended to convey the same meaning as the words, 'by the law of the land', in Magna Carta." See *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 59 U. S. 272 (1855). Moreover, in the 1884 case of *Hurtado* v. *California*, 110 U. S. 516

(1884), the Supreme Court said:

> Due process of law in the [Fourteenth Amendment] refers to the law of the land in each state which derives its authority from the inherent and reserved powers of the state, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions, and the greatest security for which resides in the right of the people to make their own laws, and alter them at their pleasure.

Petitioners refer to a lack of due process. In this case, we are referring to procedural due process—not substantive due process. Two of the essential constructs of due process, which are the vein of nearly every other application of the clause, are to guarantee to all the ordinary processes of law and proper notice of what the law is. See *Johnson* v. *United States*, 576 U. S. ___ (2015) (slip op., at 3). Procedural due process is the more present of the two established branches—with the other being substantive due process. It serves to provide the basic guarantees of procedure, or to return to the language of the constructs: The ordinary processes of law. *Ibid.* Among its many guarantees, one has the rights to, first, an impartial judge or decisionmaker. In that, "recusal [must be required] where the probability of actual bias on the part of the judge or decision-maker [sic] is too high to be constitutionally tolerable." *Caperton* v. *A. T. Massey Coal Co., Inc.*, 556 U. S. 868 (2009) (quoting *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975)). Second, there is a right to discovery. See *Brady* v. *Maryland*, 373 U. S. 83 (1963). These guarantees shape the course of a trial and litigation. They come in varying degrees of complexity, but all *ultimately* are for fulfilling the mandate of the ordinary process construct. Each guarantee of procedural due process is linked to that construct in some way or another.

Under *Hagar* v. *Reclamation Dist.*, 111 U. S. 701 (1884), a defendant is entitled to an "opportunity to be heard." *Id.*,

at 708. This finding applies equally to criminal, as it does to civil, proceedings. This was, also, a finding of procedural due process—but one which contributes to a more formative whole. Under section 1983, title 41, United States Code, Petitioner was most certainly not entitled to their constitutional rights per the Fourteenth Amendment to the United States Constitution. This section says, "[e]very person who, under color of any statutes . . . subjects . . . any citizen to the deprivation of any rights . . . secured by the Constitution and laws, shall [result in] . . . other proper proceeding[s] for redress." This "other proper proceeding for redress" would be seeking a petition for Anytime Review, as he is constitutionally able to do, and we are able to constitutionally review that matter.

In all fairness, we do recognize that there was, ultimately, a lack of due process given to the Petitioner. While there may have been evidence to present one side of the story, there was no ability or opportunity for the Petitioner to do the same. As we recently held only two years ago in *devTools*, *et al.* v. *United States*, 9 U. S. 113 (2020), "[a] fair procedure in this case, among other things, [sic] would have 'provide[d] opportunities for petitioner to explain themselves, to submit documents that might be helpful to their case, . . . [to] appeal' or some other alternative which would have 'afforded the petitioner their due process rights.'" In previous cases, our Court has asked the question of "has fair procedure been followed before depriving a person of life, liberty, or property"? *Trump* v. *United States*, 2 U. S. 10, 57 (2017) (*per curiam*). Equipped and armed with this rudimentary understanding of due process, we must now analyze the different branches and types of due process, and—from there—we can review their applications to this specific case before us.

In addition to my already-established explanation of procedural due process, I find it important to remind not only our readers but the Court that as a matter of procedure,

every accused person of a crime is presumed innocent until shown to be guilty. That sentiment is best described by our Court in *Coffin* v. *United States*, 156 U. S. 432 (1895), which said that the "principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Id.*, at 453. This inclusion was intended by our Founders to prevent the institution of the courts of admiralty as had been done by the British, which required that a person prove their innocence, which, in effect, is asking a person to prove a negative, a virtual impossibility.

Substantive due process—which would be the fraternal twin of procedural due process—originated in the infamous case of *Dredd Scott* v. *Sandford*, 60 U. S. 398 (1856). In which, the Court held as a matter of substance—a law which has the effect of depriving a person of property violates the guarantee of due process, see *id.*, at 626. While this principle was initially for conservative activism, to preclude valid changes in law, it quickly developed as a silly instrument for liberal activists in the nineteenth and twentieth centuries to, essentially, create and manifest law. See, *e.g.*, *Meyer* v. *Nebraska*, 262 U. S. 390 (1923); *Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925); *Lochner* v. *New York*, 198 U. S. 45 (1905); and *Roe* v. *Wade*, 410 U. S. 113 (1973).

Historically, substantive due process was the root of the right to privacy and a "liberty of contract." *Lochner*, *supra*, at 56. The application of substantive due process has clearly changed over time. This case, however, does not relate to substantive due process; although, its characteristics do contribute, just as some features of procedural due process do, to a more formative whole.

As we initially detailed in *Codygamer1000* v. *United States*, 2 U. S. 18 (2017), we created a third branch of due process—formative due process. We reinforced this branch to sharpen and clean it up a bit in *devTools*, *et al.* v. *United*

States, 9 U. S. 113 (2020). Formative due process, essentially, is a matter of form. Was there actually a process? What process was it? Was that process sufficient? Those are the matters of form included and discussed in formative due process. This case specifically relates to this branch of due process.

So, first, was there even a process? Well, under the statutes provided in the National Security Act of 2020, there is a procedure laid out—but that does not mean the procedure was executed in respect to our Constitutional. Our founding fathers were quite clear when they adopted the Constitution of the United States. And we, the Court, find it incredibly offensive that we dip our quills into our ink, produce opinion after opinion for people to blatantly disregard our rulings and interpretations of the Constitution of the United States. Since 1792, the Constitution of the United States has been the law of the land. It is simple. Any student in any civics and government class could tell you the same; it is one of the first lessons taught. And we have continuously upheld that from our first writing of that phrase in *Hayburn's Case*, 2 U. S. 409 (1792). So, when the national security council for their own snickers and giggles votes to declare someone a national security threat without providing this person any time of day to simply hear him out, that is the first strike called from the umpire.

Strike two is called after not providing a process. It is well grounded in this Court's jurisprudence that an opportunity to be heard, *ibid*, must be afforded to "parties whose rights are to be affected." *Mathews* v. *Elridge*, 424 U. S. 319, 333 (1976). There was absolutely nothing offered to the Petitioner to allow him to make his case, to grant him his opportunity to be heard. Nothing at all.

The next question we are supposed to ask is if the process was sufficient, but that is an obvious strike three—you are out—given that there was (1) no process offered and (2) no attempt to create such an improvision of a process. We can

safely and wisely say: No, the process was not sufficient. Therefore, there was absolutely in no way in Hell, Earth, or Heaven that due process was satisfied.

III

There are very limited circumstances under which a person is entitled to judicial review of an adverse personnel action; there is no explicit right to work for the government. See *Adler* v. *Board of Education*, 342 U. S. 485, 492 (1952). While our Court has acknowledged several notable exceptions to this rule, see, *e.g.*, *Pickering* v. *Board of Education*, 391 U. S. 563 (1968); *Mt. Healthy* v. *Doyle*, 429 U. S. 274 (1977), the Court has continued to observe that reasonable limitations are appropriate. See *Garcetti* v. *Ceballos*, 547 U. S. 410, 423 (2006). This is partially due to the fact that an employee of the government has inherently accepted limitations. *Waters* v. *Churchill*, 511 U. S. 661, 671 (1994) (plurality opinion) ("[T]he government as an employer indeed has far broader powers than does the sovereign government"). Indeed, the government may not "condition employment on a basis that infringes the employee's constitutionally protected interest[s]." *Connick* v. *Myers*, 461 U. S. 138, 142 (1983). This, however, does not mean that "every employment decision [should become] a constitutional matter." *Id.*, at 143. It does mean that a public employer cannot "leverage the employment relationship to restrict … the liberties [that] employees enjoy in their capacities as private citizens." *Garcetti*, 547 U. S., at 419 (citing *Perry* v. *Sinderman*, 408 U. S. 593, 597 (1972)). In summary, although public employees are entitled to certain rights under the Constitution, in their capacity as private citizens, this does not empower them to constitutionalize grievances with their employer. *Connick*, 461 U. S., at 154.

Title 5, United States, we find various responsibilities and prohibitions outline the role of government organization and its employees. The government, as an employer,

may not discriminate against an employee or applicant "on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others." Section 2302(b)(10), title 5, United States Code.

There is no debate as to whether the government can "condition public employment on a basis that infringes the employee's constitutionally protected interest[s]." *Connick* v. *Myers*, 461 U. S. 138, 142 (1983). They cannot. For many years, the Court reinforced "the unchallenged dogma . . . that a public employee had no right to object to conditions placed upon the terms of employment—including those which restricted the exercise of constitutional rights." *Id.*, 143. And while that principle has been upheld in certain respects, see *id.*, at 144-145, the Court impressed that employees do not surrender all their First Amendment rights by virtue of their employment with the government; the First Amendment "protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern." *Garcetti* v. *Ceballos*, 547 U. S. ___, ___ (2006) (slip op., at 5); see also *Pickering* v. *Board of Education*, 391 U. S. 563, 568 (1968); *Connick*, *supra*, at 147; *Rankin* v. *McPherson*, 483 U. S. 378, 384 (1987); *United States* v. *Treasury Employees*, 513 U. S. 454, 466 (1995). Federal antidiscrimination laws prohibit the government from "discriminat[ing] for or against any employee . . . on the basis of conduct which does not adversely affect the performance of the employees . . . or the performance of others." Section 2302(b)(1), title 5, United States Code. This means that the government cannot even *consider* conduct unrelated to job performance when it makes a personnel decision. This reading is foreclosed by the text of the law. Congress' purpose in enacting the statute was to "nullif[y] . . . the doctrine" of at-will. *Engquist* v. *Oregon Dept. of Agriculture*, 553 U. S. 591, 614 (2008) (Stevens, J., dissenting). It sought to do this by requiring a personnel action by the government by sufficiently grounded in some legitimate

system of merit (barring discrimination based on conduct unrelated to job performance). And that the government has a "rational basis" for taking action against one of its employees. *Ibid*. Before the statute, this was not necessarily the case. The government had long operated under the theory that a person had no constitutional right to work for the government, and—therefore—could be fired for any reason, even on a basis which would infringe upon their exercise of constitutional rights. See *Adler* v. *Board of Education*, 342 U. S. 485, 492 (1952). And although that understanding of the Constitution has long since been extinct, see, *e.g.*, *Connick*, *supra*, at 142 (concluding that public employment may not be conditioned on a "basis that infringes upon the employee's constitutionally protected interest in freedom of expression")—the statute has remained.

The reading of section 2302(b)(1), title 5, United States Code, at its core, is a prohibition on discrimination—in its noun form. It provides that the government may not "*discriminate* for or against any employee . . . on the basis of conduct which does not adversely affect the performance of the employee . . . or the performance of others." *Ibid*. (emphasis added). In cases where the statute makes an absolute prohibition, it plainly says the government may not "take, or fail to take" a certain "personnel action." Section 2302(b)(9), title 5. As we know, when Congress "uses particular language in one section of a statue but omits it in another," it "generally acts intentionally." See *Department of Homeland Security* v. *MacLean*, 574 U. S. ___, ___ (2015) (slip op., at 7) (citing *Russello* v. *United States*, 464 U. S. 16, 23 (1983)). Therefore, Congress, when it decided to use "discriminate" as opposed to "take, or fail to take" – it did not intend to create an absolute prohibition. Rather, as the language provides, it is a ban on *discrimination*. Absent a statutory definition of discrimination, we assume lawmakers use words in "their natural and ordinary signification." *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U.

S. 1, 12 (1878). In general, "discrimination" means "unfair treatment or denial of normal privileges to persons." Black's Law Dictionary 467 (6th ed. 1990). To which, in this matter, therefore, the statute proscribes "unfair treatment" "on the basis of conduct which does not adversely affect the performance of the employee . . . or the performance of others."

Employers have a "general right to make a contract in relation to [their] business" because "liberty of the individual [is] protected by the Fourteenth Amendment of the Constitution." *Lochner* v. *New York*, 198 U. S. 45, 53 (1904) (citing *Allgeyer* v. *Louisiana*, 165 U. S. 578, 591 (1897)). Moreover, "[t]he right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it." *Adair* v. *United States*, 208 U. S. 161, 174 (1908). Under this framework of "liberty," which is cemented into precedent, an employer, "for whatever reason, . . . dispense with the services of such employ[ee]." *Id.*, 175. There is, it follows, an equity of relationship between employers and employees—the former are free to terminate their employees (regardless of the reasonability of such a decision), and the latter are free to quit services in which they are engaged (regardless of the viability of doing so). *Ibid.* Absent a contract between both parties setting forth terms of an employment agreement, there is no civil action which could provide an employee relief for what he may feel was unjust termination.

Petitioner raises that employment is protected under the "property" clause of the Fourteenth Amendment to the United States Constitution. We have protected employees historically under the First Amendment's guarantee of free speech. See *Rutan* v. *Republican Party of Illinois*, 497 U. S. 62 (1990); see also *United States Civil Service Commission* v. *National Ass'n of Letter Carriers*, 413 U. S. 548 (1973). In our previous decision of *Massachusetts Bd. of Retirement* v.

Murgia, 427 U. S. 307 (1976), we "[gave] no support to the proposition that a right of governmental employment per se is fundamental." (quoting *San Antonio School District* v. *Rodriguez*, *supra*; *Lindsey* v. *Normet*, 405 U. S. 56, 73 (1972); *Danridge* v. *Williams*, *supra*, at 485). We have also held that "there is no fundamental right to government employment for purposes of the Equal Protection Clause." *United Building Constr. Trades* v. *Mayor*, 465 U. S. 208 (1984). See also *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U. S. 307, 313 (1976) (*per curiam*); *McCarthy* v. *Philadelphia Civil Service Comm'n*, 424 U. S. 645 (1976) (*per curiam*). Thus, the fact that employment at-will is not "property" for purposes of the Due Process Clause, see *Bishop* v. *Wood*, 426 U. S. 341, 345-347 (1976); see also *Haddle* v. *Garrison*, 525 U. S. 121 (1998). While the Petitioner is correct to cite the Due Process clause of the Fourteenth Amendment, he is incorrect to protect his employment status under the property clause. Instead, he should have maybe consulted the liberty clause. He could potentially have better luck there, but that is only speculation. Our jurisprudence on protecting one's right to employment under the property clause has been complicated at best. In particular, the Court stated that a person may have a protected property interest in *public* employment if contractual or statutory provisions guarantee continued employment absent "sufficient cause" for discharge. *Id.*, at 576-578. See *Arnett* v. *Kennedy*, 416 U. S. 134 (1974).

Following this train of thought, while I agree that the Petitioner was unconstitutionally ejected from his position faster than a pilot ejecting himself out of a jet during a dogfight, I do not find his removal to be protected under the property clause; rather, it would find a better home under liberty or even life.

* * *

Subsequently, while we are not able to reinstate the Petitioner to his seat on the National Security Council, the Council and the Executive ought to take note of our holding here today and reverse their unconstitutional makes by not granting their constituents and members their due process rights.

It is so ordered.

CHIEF JUSTICE VINSON took no part in the consideration or the decision of this case.